

Clerk, U.S. District Court
Southern District of Texas
FILED

APR 28 2015

David J. Bradley, Clerk of Court

A091 (Rev. 8/01) Criminal Complaint

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXASUNITED STATES OF AMERICA
V.
Esguin Ivan HERBERT-Ortiz
and **Marco RIVERA-RODRIGUEZ**

CRIMINAL COMPLAINT

Case Number: **C-15-511M**

I, the undersigned complainant state that the following is true and correct to the best of my knowledge and belief. On or about 4/27/2015 in Kenedy County, in the

(Date)

Southern District of Texas defendant(s) **Esguin Ivan HERBERT-Ortiz**
and **Marco RIVERA-RODRIGUEZ**

each aiding, abetting and assisting one another, did knowingly or in a reckless disregard of the fact that an alien had come to, entered, or remained in the United States in violation of law, transport, or move or attempt to transport or move such alien within the United States by means of transportation or otherwise, in furtherance of such violation of law

in violation of Title 8 United States Code, Section(s) 1324.
I further state that I am a(n) Border Patrol Agent and that this complaint is based on the following facts:

Official Title

See Attached Affidavit of U.S. Border Patrol Agent **Carlos Rodriguez**

Continued on the attached sheet and made a part of this complaint:

☒ Yes☐ No

Signature of Complainant

Carlos Rodriguez
Printed Name of Complainant

Sworn to before me and signed in my presence, and probable cause found on:

April 28, 2015

Date

at

Corpus Christi, Texas

City and State

Jason B. Libby, U.S. Magistrate Judge

Name and Title of Judicial Officer


Signature of Judicial Officer

AFFIDAVIT

The information contained in this report/affidavit is based upon my personal participation in the investigation, which included, but is not limited to information related to me by other agents and officers participating in the investigation.

On April 27, 2015, Border Patrol Agent (BPA) Joseph Corona, assisted by several other Border Patrol agents from the Kingsville station, encountered HERBERT-Ortiz, Esguin Ivan and RIVERA-Rodriguez, Marco attempting to smuggle seven undocumented aliens in the Paistle ranch on the east side of Highway 77 near Sarita, Texas.

On April 27, 2015, at approximately 12:30 p.m., BPA Corona was on roving patrol duties in the Paistle Ranch. BPA Corona was attempting to locate a group of undocumented aliens that had crossed the south Juanita fence earlier in the morning, when he observed one individual run from a brushy area. BPA Corona placed a call over the service radio to other agents in the area and then drove towards the running individual. BPA Corona then observed several additional people exit the brushy area and begin to run south in an open field. BPA Corona, along with the responding agents, apprehended nine subjects as a result. All nine subjects admitted to being in the United States illegally. Agents placed all nine subjects under arrest. A search of the area for additional subjects yielded negative results.

All nine subjects were transported to the Kingsville Border Patrol Station for processing. At the Kingsville Station, BPA Corona and BPA Escamilla interviewed all nine subjects to determine who was aiding them while circumventing the Checkpoint. SIMON-Aguilar, Jose, QUINO-Mejia, Romario, and XICAY-Chacar, Julio were able to identify HERBERT-Ortiz, Esguin and RIVERA-Rodriguez, Marco as the brush guides on a photo line-up.

MIRANDA RIGHTS:

On April 27, 2015, at 2:05 pm, HERBERT-Ortiz was read his Miranda Warnings, as per Service form I214S, in the Spanish language by BPA Eloy Escamilla and witnessed by BPA Jason Dipple. HERBERT signed in the designated area and stated he would not make a statement without the presence of an attorney.

On April 27, 2015, at 3:30 pm, RIVERA-Rodriguez was read his Miranda Warnings, as per Service form I214S, in the Spanish language by BPA Taylor Potivent and witnessed by Supervisory Border Patrol Agent (SBPA) Nathan Newman. RIVERA-Rodriguez signed in the designated area and stated he would make a statement without the presence of an attorney.

On April 27, 2015, 2:15 pm, QUINO-Mejia was read his Miranda warnings, as per Service form I214S, in the Spanish language by BPA Eloy Escamilla and witnessed by BPA Jason Dipple. QUINO-Mejia signed in the designated area and stated he would make a statement without the presence of an attorney.

On April 27, 2015, at 2:00 pm, SIMON-Aguilar was read his Miranda Warnings, as per Service form I214S, in the Spanish language by BPA Eloy Escamilla and witnessed by BPA Jason Dipple. SIMON-Aguilar signed in the designated area and stated he would make a statement without the presence of an attorney.

On April 27, 2015 at 4:00 pm, XICAY-Chacar was read his Miranda Warnings, as per Service form I214S, in the Spanish language by BPA Eloy Escamilla and witnessed by BPA Jason Dipple. XICAY-Chacar signed in the designated area and stated he would make a statement without the presence of an attorney.

PRINCIPALS STATEMENTS:

HERBERT-Ortiz declined to provide a statement without the presence of an attorney.

RIVERA-Rodriguez, Marco stated he is citizen of Mexico. RIVERA-Rodriguez, Marco stated that he crossed the Rio Grande River about a year and a half ago near Hidalgo, Texas, and has been living in Edinburg, Texas with his wife and kids.

RIVERA stated he was picked up at a HEB Grocery store in McAllen by a female driver in a light brown Toyota car. RIVERA claimed she drove him to a house where several other people got into the car. From the house they were dropped off on highway 186 near Port Mansfield, Texas. RIVERA stated the guide was a tall skinny and spoke with an accent. He stated neither he nor his brother were guides.

On 04/27/2015 at approximately 6:30 p.m., RIVERA approached BPA Jason Dipple and requested to change his statement. Agents then re-interviewed RIVERA where RIVERA stated that he was the guide. He stated he and his brother were picked up at the HEB like he previously stated. He claimed that he was going to get paid \$300 per subject that successfully arrived in Houston, Texas. He stated that he normally works the Falfurrias area and was unfamiliar with the route he was taking. He was using the GPS feature on his phone and was told to walk to Sarita, Texas to be picked up by the sister of the women that dropped them off.

NOTE: Record checks showed RIVERA-Rodriguez has been removed from the United States three (3) times (one Expedited Removal and two Reinstatements).

MATERIAL WITNESS STATEMENTS:

QUINO-Mejia stated he is citizen of Guatemala who crossed the river near Hidalgo, Tamaulipas by raft. After crossing the river, QUINO-Mejia claims to have walked about three hours until being picked up by a man in a four door car and dropped at a field of oranges. QUINO-Mejia stated he was later picked up by another man who was bald with tattoos in his right arm who took him to a gray house in McAllen, Texas. QUINO-Mejia claims to have spent about eight days along with about 30 other people at this house. After the eight days, QUINO-Mejia claims to have been picked up by another man in a blue four door pickup and taken to a female's house where he stayed for three days. QUINO-Mejia to have stayed there with nine other people. QUINO-Mejia stated the group was then taken from that house by a female that dropped them off on the side of road in a gray four door car. While driving to the drop off spot, QUINO-Mejia claims the female stopped to drop four of the subjects off on the side of the road because the car was riding low due to all of the weight. QUINO-Mejia claims to have been dropped initially at the drop off spot with the two guides and two others before the female went back to pick up the other four. Once all were together, QUINO-Mejia claims to have walked for about five nights starting on Wednesday the 22nd of April 2015. QUINO-Mejia claims there was a total of nine walking in the brush and with two of them being the guides. QUINO-Mejia claims the two

subjects were the guides because initially they told him they will take him to his destination. QUINO-Mejia claims they both had a compass and were in the front.

(Subject was shown a photo lineup of several individuals and was able to point out both HERBERT-Ortiz, Esguin and RIVERA-Rodriguez, Marco as being the brush guides).

SIMON-Aguilar stated he is citizen of Mexico. SIMON-Aguilar stated he crossed the Rio Grande River on April 21, 2015 near Hidalgo, Texas and was picked up in a gray suburban and taken to an unknown location in McAllen, Texas. SIMON-Aguilar stated he was the only person dropped off at the house that he stayed at. He further stated there were about ten other people at the house when he arrived there. SIMON-Aguilar stated the next morning a female arrived at the house in a four door Toyota sedan. SIMON-Aguilar stated when she arrived, he and eight other people got into the sedan and started to drive. SIMON-Aguilar claims they traveled for about twenty minutes before the female told him and three other people to get out of the car and wait for her to return. SIMON-Aguilar stated about an hour later she returned to pick them up, and drove them to where she had dropped off the rest of the group. SIMON-Aguilar stated after being dropped off with the rest of the group, a chubby man told them to turn off their cell phones and to follow him. SIMON-Aguilar stated that a chubby man and a man with a dark complexion led the group for six days and would take turns being in the front and the back of the group.

(Subject was shown a photo lineup of several individuals and was able to point out both HERBERT-Ortiz, Esguin and RIVERA-Rodriguez, Marco as being brush guides).

XICAY-Chacar stated he is citizen of Guatemala. XICAY-Chacar stated he crossed the Rio Grande River on April 15, 2015 near Brownsville, Texas and was taken to a Wal-Mart. XICAY-Chacar stated he was then picked up by an unknown women in a gray Toyota Corolla. XICAY-Chacar stated the women then drove him to her house. XICAY-Chacar stated after five days he and several other people got into her Toyota. XICAY-Chacar claimed he and two other people were put into the trunk and they stayed in the trunk for about an hour. XICAY-Chacar stated the driver then pulled over on the side of the road and let them out.

XICAY-Chacar stated the group then walked for six days and were threatened with a knife if they didn't follow instructions. XICAY-Chacar stated that in addition to this threat, the guides also stated if they (smuggled aliens) told the immigration officers on them, they (guides) know people that would kill their families. During the interview, XICAY-Chacar gave a description of a red in color multi-tool knife with pliers at the end. XICAY-Chacar was shown a red in color multi-tool knife recovered during a Terry Frisk of RIVERA-Rodriguez. XICAY-Chacar claimed it was the exact same multi-tool knife the guide threaten them with.

In addition to this threat, XICAY-Chacar stated he was singled out by the guide and a person who was helping the guide. XICAY-Chacar stated the guide would kick him and try to pick a fight with him. XICAY-Chacar stated the guide had the person helping him yell at him if he drank the clean water. When asked what this meant, XICAY-Chacar stated the group had to drink dirty water out of cattle troughs, but the guide and his assistant got clean water. XICAY-Chacar stated the group had to carry all the water and belongings of the guide and the person helping the guide.

XICAY-Chacar said he overheard the guide talking to the lady on the phone and she stated there was another group waiting to be dropped off.

(Subject was shown a photo lineup of several individuals and was able to point out both HERBERT-Ortiz, Esguin and RIVERA-Rodriguez, Marco as being brush guides).

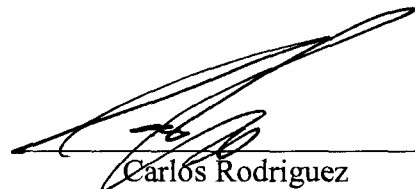
At the time of the encounter, a Terry Frisk for weapons was conducted by BPA Corona to all aliens detained. As a result of the Terry Frisk, RIVERA-RODRIGUEZ was in possession of a red in color multi-tool knife. RIVERA claimed full ownership of the multi-tool knife.

No exculpatory statements were given in the interviews of the remaining aliens. Three of the smuggled aliens, ROSALES-Serrano, CAZALES-Oropeza, and LANDAVERDE-Mancias informed BPA Corona, that they were not allowed to say anything to immigration and refused to point out the guides on the photo line-up due to fear or their lives and the lives of their families.

The other smuggled alien, FUNEZ-Carias when showed the photo-line-up was able to identify the brush guides.

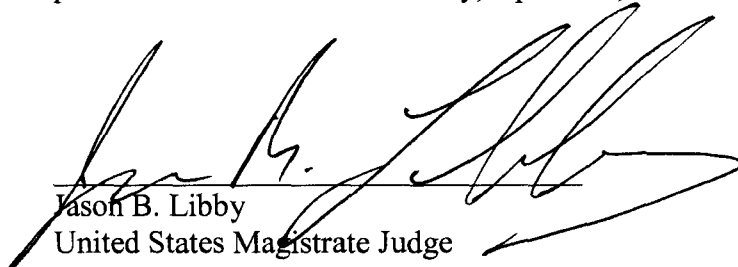
The facts of this case were presented to Assistant United States Attorney Michael Hess who accepted Esguin Ivan HERBERT-Ortiz and Marco RIVERA-Rodriguez for prosecution of 8 USC 1324, Alien Smuggling.

Jose Guadalupe SIMON-Aguilar, Romario QUINO-Mejia, and Julio XICAY-Chacar will be held as material witnesses in this case.



Carlos Rodriguez
Border Patrol Agent

Sworn to before me, signed in my presence, and
probable cause found on this day, April 28th, 2015



Jason B. Libby
United States Magistrate Judge